

**FILED**

2008 AUG -4 PM 2:28

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY Rm DEPUTY

1 PARRA VICTOR

2 CDC No. P-58682

3 P.O. Box. 799002

4 San Diego CA. 92179

5 In Prose

**NUNC PRO TUNC**

**JUL 30 2008**

6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10  
11 VICTOR PARRA, Jr.,

12 Plaintiff

13 V.

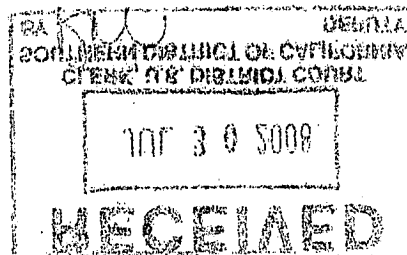
14 R. HERNANDEZ et al.,

15 Defendants

Case No. 08CV0191 H (CAB)

SUPPLEMENTAL LODGEMENT  
(ANSWER TO DEFENDANTS MOTION TO DISMISS)

16  
17 These Documents Notice, Motion and Memorandum of Law in  
18 opposition to defendants motion to dismiss is submitted in support of plaintiffs  
19 motion to alter or amend a judgment.  
20  
21  
22  
23  
24  
25  
26  
27  
28



CP

**VERIFICATION****STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO**

Case No. 08CV0191 H (CAB)

(C.C.P. SEC.446 &amp; 201.5; 28 U.S.C. SEC. 1746)

I, VICTOR PARRA DECLARE UNDER PENALTY OF PERJURY  
THAT: I AM THE Plaintiff IN THE ABOVE ENTITLED ACTION;  
I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS  
TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND  
BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS 27 DAY OF: July 2008 AT Richard J. Donovan, 480 Alta Road, San Diego CA 92179-9002

(SIGNATURE) Victor Parra  
(DECLARANT/PRISONER)

**PROOF OF SERVICE BY MAIL**

(C.C.P. SEC.1013 (a) &amp; 2015.5; 28 U.S.C. SEC.1746)

I, VICTOR PARRA AM A RESIDENT OF Richard J. Donovan Corr. Fac. San Diego  
COUNTY, STATE OF CALIFORNIA. I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND AM ~~1~~  
A PARTY OF THE ABOVE-ENTITLED ACTION. MY STATE PRISON ADDRESS IS: P.O. BOX

ON July 27 2008 I SERVED THE FOREGOING: Supplemental Lodgement  
(Answer to defendants motion to dismiss)

**(SET FORTH EXACT TITLE OF DOCUMENTS SERVED)**

ON THE PARTY (S) HEREIN BY PLACING A TRUE COPY (S) THEREOF, ENCLOSED IN A SEALED ENVELOPE (S),  
WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED  
AT 480 Alta Road, San Diego CA 92179-9002

(To the Clerk)  
United States District Court  
Southern District of California  
880 Front Street, Suite 429D  
San Diego CA 92179-8900

Sylvie P. Snyder  
Deputy Attorney General  
110 West A. Street, Suite 1100  
San Diego CA 92101  
P.O. Box 85266  
San Diego CA 92186-5266

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS  
REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED.  
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: July 27, 2008

Victor Parra  
(DECLARANT/PRISONER)







1 VICTOR PARRA  
2 CDC No. P-58682  
3 P.O. Box 799002  
4 San Diego CA 92179  
5 In Prose

6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10  
11 VICTOR PARRA  
12 Plaintiff

13 V.

14 R. HERNANDEZ, et al.,  
15 Defendants

Case No. 08CV0191 H CAB

NOTICE OF ANSWER TO DEFENDANTS MOTION  
TO DISMISS AND MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT OF ANSWER.

Hearing : July 22, 2008  
Time : 9:00 am  
Courtroom : E  
Judge : The Honorable  
Cathy Ann Bertivengo

16  
17  
18 COMES NOW PLAINTIFF, please take notice that plaintiff  
19 Victor Parra, answers defendants motion to dismiss and in support of his  
20 answer he submits a memorandum of points and authorities.  
21

22  
23 Dated: July 12, 2008

Respectfully Submitted  
Victor Parra  
In Prose

VERIFICATIONSTATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

Case No. 08CV0191 H CAB

(C.C.P. SEC.446 &amp; 201.5; 28 U.S.C. SEC. 1746)

I, Victor Parra DECLARE UNDER PENALTY OF PERJURY  
THAT: I AM THE Plaintiff IN THE ABOVE ENTITLED ACTION;  
I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS  
TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND  
BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS 12 DAY OF: July 20 08 AT Richard J.  
Donovan Corr. Fac, San Diego CA.

(SIGNATURE) Victor Parra  
(DECLARANT PRISONER)

PROOF OF SERVICE BY MAIL

(C.C.P. SEC.1013 (a) &amp; 2015.5; 28 U.S.C. SEC.1746)

I, Victor Parra AM A RESIDENT OF Richard J. Donovan Corr. Fac, San Diego  
County STATE OF CALIFORNIA. I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND AM NOT  
A PARTY OF THE ABOVE-ENTITLED ACTION. MY STATE PRISON ADDRESS IS: P.O. BOX 799002 San Diego  
CA. 92179

ON July 12 20 08 I SERVED THE FOREGOING: No file of Answer  
To defendants Motion to Dismiss and Memorandum of Points and Authorities.  
In support of Answer.

(SET FORTH EXACT TITLE OF DOCUMENTS SERVED)

ON THE PARTY (S) HEREIN BY PLACING A TRUE COPY (S) THEREOF, ENCLOSED IN A SEALED ENVELOPE (S),  
WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED  
AT Richard J. Donovan Corr. Fac, P.O. Box. 799002, San Diego CA. 92179

(To the Clerk)  
United States District Court  
Southern District of California  
880 Front Street, Suite 4290  
San Diego CA. 92101-8709

Sylvie R. Snyder  
Deputy Attorney General  
110 West A. Street, Suite 1100  
San Diego CA. 92101  
P.O. Box. 85266  
San Diego CA. 92186-5266

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS  
REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED.  
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: July 12, 2008

Victor Parra  
(DECLARANT PRISONER)

2







VICTOR PARRA  
CDC No. P-58682  
P.O. Box 799002  
San Diego CA 92179

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

VICTOR PARRA

Plaintiff

v.

R. HERNANDEZ et al.,

Defendants

Case No. 08CV0191 H CAB

ANSWER TO DEFENDANTS MOTION TO DISMISS

Hearing : July 22, 2008

Time : 9:00 a.m.

Courtroom : E

Judge : The Honorable  
Cathy Ann Bencivengo

I

INTRODUCTION

Plaintiff Victor Parra, a prisoner at Richard J. Donovan Correctional Facility ("RJDCF") in San Diego California, and proceeding pro se, Submitted a Civil Rights Complaint pursuant to 42 U.S.C. Section 1983. Plaintiff asserts he suffers from a mental illness requiring participation in psychiatric programs, and classified as sensitive needs yard (SNY) [Protected Custody] alleges various RJDCF officials violated his right to be free from cruel and unusual punishment, retaliated against him, and violated his right to due process in the defendant's failure to give plaintiff constructive notice of a Rule or Regulation, failure to give him any kind of hearing regarding deprivation of a liberty interest in out door exercise or afford him due process before placement on atypical conditions of confinement, when

1 he was transfer to Unit 8 for refusing to sign a waiver in order to be double celled  
 2 with an inmate who was not compatible and who plaintiff believed would assault him.  
 3 (Compl. par. 1-23) plaintiff alleges he was deprived of outdoor exercise and  
 4 decompensated due to the isolation and denial of all outdoor exercise and limited  
 5 if any recreational state provided reading material. Plaintiff further alleges peristent  
 6 violations of California law. (Id. par. 53-115) Plaintiff seeks a declaratory judgment  
 7 compensatory damages and cost (Id. at 16 par. 1-11.)

## 8 II

### 9 DEFENDANTS MOTION TO DISMISS

#### 10 a) Federal Claims

##### 11 1. Eight Amendment Claims

12 On deprivation of outdoor exercise (a human need) defendants only chose the  
 13 cause of action against defendants Limon and Liles. Motion to Dismiss (MD) (at p. 7  
 14 par 1-17) defendant argue a "disconnect" (MD p. 7 par. 11-12) and discussed  
 15 causation as a required element of a 1983 claim (MD p. 7 par. 18-23).

16 As plaintiff stated, Denial of outdoor exercise was spawned on September 25,  
 17 2006 by Limon, Lile and Captain Cota. (Compl. at 3 par 7). and continued until April  
 18 2007. Thus the affirmative link or connection between defendants action and the  
 19 claimed deprivation. Motion to dismiss on this ground should be dismissed and denied.

20 Cause of action II naming all defendants excepting the CDC. "...When they  
 21 were deliberate indifferent to plaintiff's likelihood of decompensation mental illness and  
 22 subjected him to their created 24 hour isolation..." Id at (Compl. p. 4 par. 18). defendants  
 23 only opposed this claim against Limon and Liles (MD p. 7 par. 1-17) and claim "Limon and Liles  
 24 have no liability for the conditions of confinement of which plaintiff complains." (MD p. 7  
 25 par 22-23). it takes the action of the unit sergeant and Facility Captain to perform  
 26 a Unit transfer and a staff witness. See (Compl. at 55 box 2 and 4) plus  
 27 the moving force of an employee using a "yard hold" as coercion. see (Compl. at 20)  
 28 (Defendant Limon placing a yard hold and at 51 officer Garcia placing a yard hold on



Inmate Robinson) because the initial yard hold is implemented permanently, it requires the officer and Unit Sergeant to be the moving force of the unit transfer and the Captain to approve the transfer. Thus causation is linked. Defendants Limon and Liles and Cota are required to review Institutional Classification Committee (ICC) exhibit of (Compl. p. 42) which defendants Limon, Liles and Cota did, see CDC 115 at (Compl. at 20 par 1 line 3) stating "cell status by ICC..." and Limon, Liles and Cota's name on the form, and they knew when they review ICC action (Compl. at 42 line 8-9) "that plaintiff suffered the likely hood of decompensation" as alleged at (Compl. p. 4 par. 14) Defendant Hernandez, Cowan and Cota created policies and procedures and were willfully blind to constitutional violation by creating a 24 hour Isolation Unit and issue "yard Hold" indefinitely being the moving force and deliberate Indifferent when they placed plaintiff in Unit 8 where they knew constitutional outdoor exercise was not provided, and at unit 7 after 80 days without yard where they knew yard was limited. Defendants argument of Causation must be denied, they were deliberate indifferent to plaintiffs mental illness (medical needs) as stated at (Compl. p. 4 par. 18)

In Cause of action ~~III~~ defendants Limon, Liles and Cota's torturous methods causing causing serious psychological pain in order to double cell plaintiff when they knew he was a mentally ill patient directly violated plaintiff's eighth amendment rights defendants motion to dismiss should be denied because there is a direct link of defendants to the violation and both objective the infliction of psychological pain and subjective, their knowledge of plaintiff's illness were met and alleged both elements of the complaint.

## 2. Retaliation

Plaintiffs Cause of Action I, he argue that Liles, Limon and Cota state employees issue "RVR at Exb A." (Compl. p. 3 par 6) Took adverse action; because of; Plaintiffs protected conduct "protection from bodily harm Civil Code Sec. 43" (Compl. p. 3 par. 9); And Chilled plaintiff's exercise to protection from bodily harm when "Plaintiff agreed to double cell with Duran with the condition -hat. plaintiff would not sign the agreement and will file a suit if plaintiff was assaulted" (Compl. p. 3 par 6) and denied and chilled protection by suit or bodily harm

1 when they issued RVR at Comp.p.20. There is no penological goal in staging inmate fights  
 2 after "Plaintiff explained to Limon that Duran was not compatible with him and would  
 3 assault plaintiff..." (Compl. p. 3 par. 4). Plaintiff's conduct and right to discussion  
 4 with the appropriate staff" see (Compl. at 23, CDC Form 502, Top of form line 1-3)  
 5 is protected as "speech" when plaintiff discussed the problem with Limon and liles.  
 6 Plaintiff failed to state this on the complaint but will on an amended complaint.  
 7 thus=retaliation for engaging in limited protected speech within the scope  
 8 of the CDC 602 form, right to protection Civil Code 43

### 9 3. Unreasonable Seizure.

10 Defendants position of the IV Cause of action (Compl p. 8 par. 24-28) is  
 11 that as an inmate plaintiff does not have Fourth Amendment protections. It is  
 12 recognized by numerous courts of Law that the reasonableness in search and  
 13 seizures extends to incarcerated prisoners. Defendants Motion to Dismiss this issue  
 14 should be denied.

### 15 4. Due process claims.

16 On plaintiff's transfer to unit 8 creating atypical hardship (Compl. at  
 17 8-9 par 29-35) Cause V defendants alleged plaintiff was only subjected to a  
 18 departure of ordinary incidents of prison life for 21 days not causing atypical and  
 19 significant hardship (MD. at 11 par 19-23); On failure to give constructive notice of a  
 20 Rule or Regulation (Compl at 9 par. 36-42) Cause VI defendants alleged plaintiff was  
 21 given verbal notice by limon and liles the day the yard hold on plaintiff was  
 22 implemented (MD. at 12 par. 2-8); On deprivation of liberty interest without due  
 23 process Cause VII (Compl p. 10 par 43-46) Defendants do not address the facts of this  
 24 cause of action. it is addressed on a one liner at (MD at 12 par. 27-28); On  
 25 deprivation of liberty interest (in ones Classification) Cause VIII (Compl. at 10)  
 26 defendants alleged [non Cognizable claim] under due process concerns (MD. at 12  
 27 par. 11-15 at 14-15). Due process was required before or after deprivation of  
 28 liberties in ones aquired interests.



To determine whether a liberty interest has been created by state law, the Court must inquire into (1) whether state status or regulations restrict the power of prison officials to impose the deprivation; (2) whether the liberty in question is one of "real substance." A liberty interest of real substance occurs when deprivation places "an atypical or significant hardship on plaintiff in relation to the ordinary incidents of prison life." Plaintiff alleged on the fifth cause of action that defendants Limon and Liles "...without first conducting a review of inmate statements that inmate duran was incompatible and of plaintiff and duran's case factors ... required by the double cell review ..." (Compl. at 8 par. 30.) see factors at (Compl. p. 55 Double Cell Review Form at 2 and 3) Five factors would preclude the double celling, Factor 5 "... may threaten institutional security or safety of others." restricted Limon, Liles and Cota to order double celling but as Lt. Pederson found "... All available information sources were not review ..." (Compl. p. 8 par 27). Plaintiff privileges Library, Law Library, yard and environmental stimulation to his mental illness are of "real substance" and the 24 hour Isolation for 80 days place plaintiff in atypical and significant hardship in relation to the amenities already acquired at unit 6 (Compl. p. 9 par 33) thus Limon, Liles and Cota failure to perform a substantive attempt to verify or disprove plaintiff safety concerns against Duran restricted their power to impose a "yard hold" and 24 hour Isolation at Unit and thus violated plaintiffs Due process. Defendants Motion should be denied on this cause of action.

Defendants failure to give fair notice of a rule before being sanction for its violation violated Due process. two hour notice is not fair notice when vague verbal notice is given. defendants Motion to Dismiss should be denied on this ground. (Cause VI).

Cause of Action VII Defendants, Limon, Liles, Cota, Cowan and Hernandez deprived plaintiff of yard a liberty interest starting on September 25, 2006. The yard hold was implemented two hours after plaintiffs refusal to double cell or signed the agreement. Limon, Liles and Cota were the moving force. On October 10, 2006 This moving force action, the yard hold spawn the CDC 115, Rule violation requiring defendants Cota Cowan and Hernandez torturous approach to Isolate plaintiff at Unit 8. The loss of liberty interest

1 in out door exercise required a hearing before or after. When some type of hearing was  
 2 denied the Due process violation was denied and completed. The yard hold was never address  
 3 even after plaintiff was transfer to unit 7 receiving less than the yard time legally required.  
 4 Defendants Motion to Dismiss must be denied

5  
 6 Liberty Interest in ones classification exist where a liberty is derived by  
 7 that classification. (Compl. at 10.) Defendants confused plaintiffs eighth amendment  
 8 claims. Plaintiff made no Failure to protect claims, all defendants deprived plaintiff of  
 9 freedoms created by the Safety Concerns classification. protection is acquired by such  
 10 classification. Inmates Sandora and Robinson general population inmates were classified as  
 11 safety concerns temporarily and interacted with plaintiff at the same yard. Inmate duran was in  
 12 a Gang group yard after plaintiff was ask to double cell with Duran, the next Inmate having  
 13 contact with him was stabbed on the face and neck with a chunk Duran fashion from a  
 14 teflon spoon. Plaintiffs classification comes along with protection from other inmates.  
 15 because Defendants and all of them knew plaintiff would be place in yard hold and then  
 16 a 24 hour Isolation Due process was due. Stablished at the double cell agreement form  
 17 (Compl. at 55). Defendants argue plaintiff "double up" constitutional claims (MD. p. 12 par 16)  
 18 alleging claim VII is an Eighth Amendment claim. plaintiff here in par. 5 to 17 supra or  
 19 (Complaint at 10 par 47-51 and p. 11 par 52.) does not alleged infliction of pain as the  
 20 violation, but denial of process due before he is subject to condition violative of eighth  
 21 amendment standard. process never given. defendants Motion to Dismiss must be denied.

## 22 b) State Claims

### 23 1) Ninth Cause of action state Unreasonable seizure (Compl. at 11)

24 Defendants alleged a simple transfer from unit to unit at the prison is not violative of the  
 25 states peoples rights. (MD. at 13 and 14 at 14 par. 11-13) the watch word of the U.S. Cons.  
 26 Fourth amendment, and no cogent reason for this court to depart from the Fourth Amend.  
 27 analysis construing a provision of the state Constitution is "reasonableness". Defendants  
 28 24 hour Isolation and Yard hold used as coercion to double celled plaintiff constituted a  
 seizure at Unit B. these Coercion is unreasonable. Def. Motion to Dismiss should be denied.



2) Interference with the exercise of Civil Rights Causes of action Ten, eleven, Twelve, and Thirteenth. Plaintiff draw these actions by California Civil Code S 2, 1 (a) and (b). But miswrote the section as S 2 (a). Section S 2 (a) requires allegation of some race based or class discrimination. Section S 2, 1 (a) and (b) requires that an attempt or deprivation of a right be done by coercion, intimidation or threat. Plaintiff Cause of action Eighteenth reflects his intended purpose (Compl. p. 15 par. 110 - 114). Defendants Challenge is causation as the same defect of the eighth amendment claims (MD p. 14 par 24-28 and p. 15 par. 1-2) The court may assume cause of action eighteenth cures the defect or may give plaintiff an opportunity to amend the complaint.

3) Cause of action Fourteenth and Fifteenth. (Compl. at 13-14) defendant alleged causation the same as the eighth amendment claims (MD p. 14 par 24-28 and p. 15 par 1-2). plaintiff alleged "... defendants and all of them infringed upon plaintiff rights as stated on par 1 to 80 supra" (Compl. at 13 par 83) Yes, this argument is redundant, plaintiff has to allege with specificity what each defendant did to breach duties alleged at par. 84. plaintiff should be given an opportunity to cure these defects. the Fifteenth Cause of action is properly stated. Ver. Mot. to Dismiss should be denied.

4) Negligence. plaintiff alleges defendant that "... (CP) #85 does not requires that yard be used as punishment" (Compl. at 14 par. 99) defendants alleged "notice" as plaintiffs defect (MD at 15 par. 3-9) Defendants Interpret Operational Plan # 85 as "refusing an order to double cell" see (Compl. at 20 "specific acts" [Box] CDC IIS Form) and as ("willfully - Delaying / Obstructing a peace officer in performing of duties") (Compl. at 51 "Specific act [box] CDC IIS Form). their negligence resulted in plaintiff injuries loss of yard ext. thus the Cause of action is stated. Notice of Rules is required by CCR section 3002 subsections (a), (b) and (c). plaintiff drew upon Government Code Sec. 11340.5 (a). he should be given an opportunity to amend the complaint and defendants Mot. to dismiss denied. on 16 Cause of ac. Cause of action Seventeenth suffers from the same defect of notice drawn upon the Government code as the source of duty imposed on defendants. CCR section 3002. should be the source of duty imposed. Amending the complaint will cure the defect. def. Mot. Dis. should be denied.

1 5) The eighteenth Cause of action. This cause of action is redundant and plaintiff  
2 again alleges preceeding paragraphs to limit defendants. it should be amended to specified what  
3 each defendant did. Defendants Motion to dismiss should be denied  
4

5 CONCLUSION

6 Defendants actions are subject to scrutiny under section 1983. Defendants  
7 Motion to Dismiss should be Denied and plaintiff given an opportunity to cure any defects.

8 Unserved defendants will be served timely and would not be dismissed.

9 Dated July 12, 2008.

10 Respectfully Submitted

11 Victor Porra

12 In pro se  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



**VERIFICATION**STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

Case No. 08 CV 0191 H-CAB

(C.C.P. SEC.446 &amp; 201.5; 28 U.S.C. SEC. 1746)

I, Victor Parra DECLARE UNDER PENALTY OF PERJURY  
THAT: I AM THE Plaintiff IN THE ABOVE ENTITLED ACTION;  
I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS  
TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND  
BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS 12 DAY OF JULY 2008 AT Richard J. Donovan Corr. Fac. San Diego CA 92179

(SIGNATURE) Victor Parra

(DECLARANT/PRISONER)

**PROOF OF SERVICE BY MAIL**

(C.C.P. SEC.1013 (a) &amp; 2015.5; 28 U.S.C. SEC.1746)

I, Victor Parra AM A RESIDENT OF Richard J. Donovan Corr. Fac. San Diego  
CA 92179, STATE OF CALIFORNIA. I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND AM /NOT/  
A PARTY OF THE ABOVE-ENTITLED ACTION. MY STATE PRISON ADDRESS IS: P.O. BOX: 799002, San Diego  
CA 92179

ON July 12 2008 I SERVED THE FOREGOING: Answer to defendant's  
Motion to Dismiss

**(SET FORTH EXACT TITLE OF DOCUMENTS SERVED)**

ON THE PARTY (S) HEREIN BY PLACING A TRUE COPY (S) THEREOF, ENCLOSED IN A SEALED ENVELOPE (S),  
WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED  
AT Richard J. Donovan Corr. Fac. P.O. Box # 799002, San Diego CA 92179

(To the Clerk)  
United States District Court  
Southern District of California  
880 Front Street, Suite 4290  
San Diego CA 92101-8900

Sylvie P. Snyder  
Deputy Attorney General  
110 West A Street, Suite 1100  
San Diego CA 92101  
P.O. Box 25266  
San Diego CA 92185-8266

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS  
REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED.  
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: July 12, 2008Victor Parra  
(DECLARANT/PRISONER)







VICTOR PARRA  
 CDC No. P-58682  
 P.O. Box 799002  
 San Diego CA 92179  
 In Pro se

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

VICTOR PARRA

Plaintiff

V.

R. HERNANDEZ et al.,

Defendants

Case No. OSCVO191 H CAB

MEMORANDUM OF POINTS AND AUTHORITIES IN  
 SUPPORT OF PLAINTIFFS ANSWER TO DEFENDANTS  
 MOTION TO DISMISS.

Hearing : July 22, 2008  
 Time : 9:00 a.m.  
 COURTROOM : E  
 Judge : The Honorable  
 Cathy Ann Bencivengo

I

History of the Case

Plaintiff Victor Parra Jr., proceeding pro se, filed a Civil Rights Complaint pursuant to 42 U.S.C. Section 1983. On January 31, 2008, Plaintiff also sought pendent jurisdiction pursuant to 28 U.S.C. Section 1367(a) regarding State claims. On March 13, 2008, This Court granted Informa Pauperis motion and performed a sua sponte screening. On May 23, 2008, Defendants filed Motion to Dismiss. Defendants Limon, Liles, Hernandez and Cowan have been served. Only the Department of Corrections and A.L. Cota defendants have not been served. The Motion to dismiss is set for hearing on July 22, 2008.



## II

### LEGAL STANDARD FOR MOTION TO DISMISS

A Federal Rule of Civil Procedure (Fed. R. Civ. P.) 12(b) expressly enumerates a list of six defenses that can be asserted in a motion to dismiss, including for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A complaint may be dismissed for failure to state a cognizable legal theory or for failure to state sufficient facts under a cognizable legal theory. *see Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). "Fed. R. Civ. P. 8(a)'s simplified pleading standard applies to all civil actions, with limited exceptions," none of which applies to section 1983 actions. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002) a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief..." Rule 8(a). "Such a statement must simply give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Swierkiewicz*, 534 U.S. at 512.

In deciding a motion to dismiss for failure to state a claim upon which relief can be granted, this Court must accept as true the plaintiff's allegations contained in the Complaint and view them in the light most favorable to the plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, (1974) *Wileman Bros & Elliott, Inc. v. Giannini*, 909 F.2d 332, 334 (9th Cir. 1990). Thus a Complaint must stand unless it appears beyond doubt that the plaintiff has alleged no facts that would entitle him to relief. *Coneley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99 (1957). A Complaint may be dismissed as a matter of law for two reasons; (1) lack of a cognizable legal theory or (2) insufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988) In essence, as the Ninth Circuit has stated, "[T]he issue is not whether a plaintiff's success on the merits is likely but rather whether the claim is entitled to proceed beyond the threshold in attempting to establish his claims." *De la Cruz v. Torrey*, 582 F.2d 45, 48 (9th Cir. 1978). Cert. denied, 941 U.S. 965, 99 S.Ct. 2416 (1979). The court must determine whether or not it appears to a certainty under existing law that no relief can be granted under any set of facts that might be proved in support of plaintiff's claims. *Id.*

When a plaintiff proceeds pro se the pleadings must be read more liberally than pleadings drafted by a lawyer. *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 544 (1972) and afford the plaintiff any benefit of the doubt. *Karim-Panahi v. Los Angeles Police Dep.* 839 F.2d 621 (9th Cir. 1988).

1 However, "a prose litigant is not excused from knowing the most basic pleading  
 2 requirements." *American Ass'n of Naturopathic Physicians V. Hayhurst*, 227 F.3d 1104, 1107-08  
 3 (9th Cir. 2000). The court is bound to give the plaintiff the benefit of every reasonable inference  
 4 to be drawn from the "well-pleaded" allegations of the complaint. see *Retail Clerks Intern.*  
 5 *Ass'n, Local 1625, AFL-CIO V. Schermerhorn*, 373 U.S. 746, 753 (n7 6, 83 S.Ct. 1461 (1963))

6 Thus, the Plaintiff need not necessarily plead a particular fact if that fact is a reasonable  
 7 inference from facts properly alleged. see *id.*; see also *Wheeldin V. Wheeler*, 373 U.S. 647.  
 8 648, 83 S.Ct. 1441 (1963) (inferring fact from allegations of complaint.) While a court  
 9 generally cannot consider material outside the pleadings in deciding a motion to dismiss, the  
 10 Court may consider exhibits attached to, or referenced in, the complaint, and matter  
 11 which is properly subject to judicial notice. *Arpin V. Santa Clara Valley Transp. Agency*,  
 12 261 F.3d 912, 925 (9th Cir. 2003). Also see Fed. R. Civ. P. Rule 10(c) "... A copy of any  
 13 written instrument which is an exhibit to a pleading is a part thereof for all purposes." see *Park*  
 14 *Univ. Enters., Inc. V. American Cas. Co. of Reading, PA*, 442 F.3d 1239, 1244 (10th Cir. 2006)  
 15 In ruling on a motion to dismiss, the court may consider not only the textual averments of  
 16 the pleading itself, but also the contents of all exhibits attached to the pleading. *Meehan*  
 17 *V. United Consumers Club Franchising Corp.*, 312 F.3d 909, 913 (8th Cir. 2002)

18 A court must give prose litigant's leave to amend the complaint "Unless it  
 19 determines the pleading could not possibly be cured by the allegations of other facts"  
 20 *Lopez V. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) citing *Doe V. United States*,  
 21 55 F.3d 494, 497 (9th Cir. 1995). And before a prose complaint may be dismissed,  
 22 the Court must provide the plaintiff with a statement of the deficiencies in the  
 23 Complaint. *Karim-Panahi*, 839 F.2d at 623.

### 24 III

#### 25 THE EIGHTH AMENDMENT CLAIMS ARE 26 PROPERLY STATED AGAINST ALL DEFENDANTS

27 Plaintiffs first, second and third causes of action are for violation of the  
 28 Eighth Amendment based on cruel and unusual prison conditions.

# 1.) Eighth Amendment Standard

The Eighth Amendment prohibits any punishment which violates civilized standards of decency or involves the "Unnecessary and wanton infliction of pain" *Ingraham v. Wright*, 430 U.S. 651, 670 (1977) citing *Estelle v. Gamble*, 429 U.S. 97, 102-03 (1976). An Eighth Amendment claim contains both an objective and a subjective component. see *Wilson v. Seiter*, 501 U.S. 294, 298 (1991); *Osolinski v. lane*, 92 F.3d 934, 937 (9th Cir. 1996) The objective component requires the plaintiff to demonstrate that he has been subjected to specific deprivations that are so serious that they deny him "the minimal civilized measure of life's necessities." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981); see also *Hudson v. McMillian*, 503 U.S. 1, 8-9 (1992), "Because routine discomfort is 'part of the penalty that criminal offenders pay for their offenses against society' ... 'Only those deprivations denying denying "the minimal civilized measures of life's necessities" are sufficiently grave to form the basis of an Eighth Amendment violation'" *Hudson*, 503 U.S. at 8-9. (quoting *Rhodes*, 452 U.S. at 347.) The subjective component requires the plaintiff to demonstrate that the prison official acted wantonly, with a reckless disregard of a substantial risk of serious harm. see *Farmer v. Brennan*, 511 U.S. 825, 834-36 (1994); *Wilson*, 501 U.S. at 298-99.

The Supreme Court has listed as basic human needs "Food, Clothing, Shelter, medical care and reasonable safety" *Helling v. McKinney*, 509 U.S. 25, 113 S.Ct. 2475, 2480 (1995) citing *Deshaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189, 199-200, 109 S.Ct. 998 (1989). As well as warmth [and] exercise. *Wilson* Id at 501 U.S. 304. Further In Eighth Amendment cases, Courts ask whether conditions "alone or in combination; ... deprive inmates of the minimal civilized measure of life's necessities." *Rhodes* 452 U.S. at 347. This principle is sometimes called the "totality of the circumstances" approach. *Rhodes* at 363 (Brennan, J., Concurring). It does not mean that merely unpleasant conditions automatically become unconstitutional when you add them together. Rather, conditions must have "a mutually enforcing effect that produces the deprivation of a single identifiable human need" *Wilson* 111 S.Ct. at 2327. Examples of this "mutually enforcing effect" include "Isolation and environmental deprivation... presenting substantial risk to mentally ill inmate" *Madrid v. Gomez* 889 F.Supp 1146-1242 CND Cal.



1 1995).

2 "What is necessary to show sufficient harm for purposes of the Cruel and Unusual  
3 Punishment Clause depends upon the claim at issue..." Hudson. "The objective component of  
4 an Eighth Amendment claim is...contextual and responsive to contemporary standards of  
5 decency." *Id.* at 8. May it be extreme deprivations of basic human need Hudson 503 U.S.  
6 at 8-9, Rhodes 452 U.S. at 347. or the wanton and unnecessary infliction of pain Rhodes  
7 at 347. *Jordan V. Gardner*, 986 F.2d 1521, 1530 (9th Cir. 1993) (en banc) "serious psychological  
8 pain" on inmates to serve "minor [correctional] concerns," "routine and automatic security  
9 concerns," or "pragmatic interest of lesser significance" [is unconstitutional].

10 In Eighth Amendment conditions cases, the plaintiff must prove that the  
11 defendants acted with "deliberate indifference." This was first applied by the Supreme Court  
12 to medical care cases *Estelle, supra*. The Court later extended it to all conditions of confinement  
13 cases in *Wilson supra*, reasoning that if deprivations are not specifically imposed as part of a prisoner's  
14 sentence, they are not really "punishment" unless the officials imposing them "possessed a sufficiently  
15 culpable state of mind." *Id.* 111 S.Ct. at 2323. The Court then decided deliberate indifference was  
16 the appropriate state of mind requirement for conditions cases. Accord, *Farmer, supra*.  
17 Deliberate indifference falls somewhere between mere negligence (carelessness) and actual  
18 malice (intent to cause harm) *Farmer* at 114 S.Ct. 1978; *Wilson* 111 S.Ct. at 2326. That is,  
19 it amounts to recklessness *Farmer* at 1978. *Farmer* held that in an Eighth Amendment  
20 case a prison official can be found reckless or deliberately indifferent if "the official knows  
21 of and disregards an excessive risk to inmate health or safety..." *Id.* at 1979

22 2) Defendants Limon, Liles and Cota are properly linked to the  
23 deprivation to outdoor exercise yard at Unit 6 and Unit 8.

24 Defendant opposition to Cause of action I is that of "Causation" (MD p. 7 par. 1-17)  
25 and argue a "disconnect" (MD p. 7 par. 11-12) and discussed causation as a required element  
26 of a 1983 claim (MD p. 7 par. 18-23) because "... Plaintiff does not alleged Limon and Liles  
27 instituted Operational Plan No. 55..." (MD p. 7 par. 13-14) "Transfer plaintiff to unit 8, or  
28 that they were responsible for the conditions in unit eight" (MD p. 7 par. 14-15).

1 "A person 'subjects' another to the deprivation of a constitutional right, within the  
 2 meaning of [§] 1983, if [that person] does an affirmative act, participates in another's  
 3 affirmative acts, or omits to perform an act which [that person] is legally required to do that  
 4 causes the deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)  
 5 the "requisite causal connection can be established not only by some kind of direct personal  
 6 participation in the deprivation, but also by setting in motion a series of acts by others which  
 7 the actor knows or reasonably should know would cause others to inflict the constitutional  
 8 injury." *Id.* at 743-744.

9 Plaintiff proceeds on both of these theories that (1) "Plaintiff was order to sign  
 10 a double cell agreement or he would be placed on Yard hold and move to unit 8" (Compl. p. 3 par.  
 11 3). And "... Limon, Liles, and A.L. Cota enforced plan #85 and effectually deprived plaintiff of  
 12 outdoor exercise yard from September 25, 2006 to April 2007" (Compl. p. 3 par. 7). "defendants  
 13 affirmative act, On September 25, 2006 cause the deprivation [of yard] and individ (2) "set  
 14 in motion a series of acts by others" the transfer to unit 8, which they "knew or  
 15 reasonably should know would cause others to inflict the constitutional injury" 24 hour  
 16 Isolation perpetuated by administrators of unit 8 facility 2, in furtherance of the CDC  
 17 IIS and yard hold issue. (See Compl. p. 20 CDC IIS) effecting a yard hold. Defendants Motion to  
 18 Dismiss should be denied.

19 Defendants oppose Cause of action II only against Limon and Liles. (MD. p. 7 par. 1-17)  
 20 and claim Limon and Liles have no liability for the conditions of confinement of which plaintiff  
 21 complains (MD. p. 7 par. 22-23) as previously alleged it takes the actions of Limon,  
 22 Liles and Cota to be the precursors of a Unit transfer. Johnson at 743-744. defendants  
 23 policy to transfer inmates to unit 8 until they double cell is still enforced at the present  
 24 day. They knew plaintiff would be transfer to the 24 hour Isolation and they  
 25 knew plaintiff was mentally ill because they view ICC (Committee) decision to assign  
 26 plaintiff as double cell when they tried to double cell plaintiff. (See Compl. p. 20. Limon, Liles and  
 27 cota citing ICC assignment to double cell" par 1 line 2-3). plaintiff so alleged at the  
 28 Compl. p. 4 par 14. Thus they had knowledge of plaintiff likely hood of decompensation.

acted reckless when they tried to put plaintiff at risk of assault without performing the review required by the double cell agreement *Compl. p. 55*, and ignored that others would inflict the 24 hour Isolation to the likelihood of decompensation do to plaintiff's mental illness. Thus deliberate indifference by Limon, Liles and Cofer to plaintiff's medical needs is established. *Johnson, supra*.

Defendants torturous methods to inflict psychological pain to plaintiff when they knew he was mentally ill and placement in a 24 hour Isolation meet the objective requirement in *Rhodes 452 U.S. 913* and their deprivation of life necessity outdoor exercise meets the *Hudson* requirement of objective component. Did defendants knew of plaintiff's illness? (see *Compl. at ¶ 14*) yes. Did they acted recklessly?

Defendants ignored plaintiff's safety concerns and likelihood of decompensation, and that he would be deprived of outdoor exercise and subject plaintiff to severe psychological pain, and acted wantonly when they give plaintiff a Rule Violation Report and subjected plaintiff to "seven month of no yard or limited yard" "deliberate indifference" is established, and the causal connection stated. First, Second and Third Causes of action are properly stated against defendants Limon, Liles and Cofer. Defendant Motion to Dismiss should be denied.

Plaintiff made a Cause I, denial of human need, yard (Compl. p. 3 par. 9) Cause II Del. Ind. to medical needs (Compl. p. 4 par. 18.) And Cause III infliction of psychological pain (Compl. p. 5 par. 23) plaintiff made no failure to protect claim.

### 3) Retaliation First Cause of Action

Plaintiff failed to allege the conduct and right to "discussion with the appropriate staff" is protected as "speech" when plaintiff complains regarding the double cell proposed by defendants. (see statement of answer to defendants motion to dismiss" p. 3 par. 22-28 and p. 4 par. 1-8) plaintiff should be given leave to amend and fix the deficiency of this cause of action. *Karim-Panahi, supra*.

### 4) Unreasonable Seizure

Defendants position of the Fourth Cause of action is that as an inmate plaintiff does not have Fourth Amendment protections (MD p. 9 par. 17-28). As the Ninth Circuit held in *Thompson v. Souza*, 111 F.3d 694 (9th Cir. 1997) "The Fourth Amendment right to be secure



1 against unreasonable searches and seizures 'extends to incarcerated prisoners.' *Id* at 699  
 2 Prisoners 4th Amendment reasonable seizures are evaluated under the "reasonableness" standard  
 3 rather than the "Warrant" clause of the 4th Amendment *Harrison V. Lewis* 124 F.3d 197  
 4 (6th Cir. 1997) *Thompson Nicholas V. Douglas*, 112 F.3d 504 (2nd Cir. 1996) *U.S. V. Lilly*, 576  
 5 F.2d 1240 (5th Cir. 1978). "the reasonableness of a particular search [or seizure] is  
 6 determined by reference to the [detention] context." *Mickenfelter V. Summer*, 860 F.2d 328,  
 7 332 (9th Cir. 1988); As with any detained person, there are concerns that mirror those  
 8 that arise in the prison context: i.e., "the safety and security of guards and others in the  
 9 facility, order within the facility and the efficiency of the facility's operations." *Andrews V.*  
 10 *Neer*, 253 F.3d 1052, 1061 (8th Cir. 2001). The "reasonableness" of a search or seizure is a  
 11 fact-intensive inquiry see, e.g., *Thompson*, 111 F.3d 694 (9th Cir. 1997) (evaluating the reasonableness  
 12 of a strip search based on the manner and scope of the search, the place, and the justification). Plaintiff  
 13 alleged he was unreasonably seized at Unit 6 and removed... in retaliation for refusing to give them his  
 14 signature. (Compl. p.8 par.24.) That "removal and placement at Unit 8 exceeded the legitimate purpose of  
 15 detention..." (Compl. p.8 par.25) because "... at Unit 8 plaintiff would still be single cell." par.26. And  
 16 "even after complying with the double cell request..." par. 27 and 28, plaintiff was arbitrarily  
 17 isolated at Unit 8 for 80 days. At present this practice is still use as a form of coercion. And it has  
 18 resulted in prisoners being assaulted by other prisoners in order to avoid Unit 8. Inmate Date CDC  
 19 # T last two numbers 49 was slice with a razor blade after a sergeant "Pain" threatened him if he  
 20 not agree to double cell he will be placed at Unit 8. *Indid*, unreasonable seizure is a fact intensive  
 21 inquiry that cannot be determined at an early stage. Regarding seizures when officers severely  
 22 restricted movement of detainees and threatened continued detention to force detainees to submit  
 23 to interrogations The Ninth Circuit in *Ganvick V. Knapp* at 319 F.3d 1115, 1125 (9th Cir. 2003)  
 24 stated, holding "that this sort of coerced interrogation is a serious intrusion upon the  
 25 sanctity of the person. It may inflict great indignity and arouse strong resentment."  
 26 *Id* at 1120-1121. Defendants offer no legal authority or argument why plaintiff's seizure  
 27 at Unit 6 and 8 was not unreasonable or justified their actions. Defendants Motion to  
 28 Dismiss should be denied.

1 5) Due process claims

2 Plaintiff alleged transfer to Unit 8 created atypical hardship (Compl. at 8-9 par. 29-35)  
 3 defendant's position is that he was only subjected to a departure of ordinary incidents of prison life  
 4 for 21 days not causing atypical and significant hardship (Mkt at 11 par. 19-23)

5 To determine whether a liberty interest has been created by state law, the Court must  
 6 inquire into: (1) whether state status or regulations restrict the power of prison officials to impose  
 7 the deprivation; and (2) whether the liberty in question is one of "real substance". *Sandin v. Connor*  
 8 515 U.S. 472, 477-487 (1995). A liberty interest of "real substance" occurs when deprivation  
 9 places "an atypical or significant hardship on plaintiff in relation to the ordinary incidents of  
 10 prison life" *Sandin*, 515 U.S. at 483, 487. Plaintiff alleged that (1) *Limon and Liles* "...  
 11 without first conducting a review of inmate statements that Duran was incompatible and of case  
 12 factors required by the double cell review..." (Compl. at 8 par. 30) see factors at (Compl. p. 15  
 13 Double Cell Review Form at 2 and 3) Five factors would preclude double celling. Factor 5 "...may  
 14 threaten institutional security or safety of others." restricted *Limon, Liles and Cota* to  
 15 order double celling but as Lt. Pederson found "... All available information sources were not  
 16 review..." (Compl. p. 8 par. 27). Plaintiff's ordinary incidents of prison life acquired at Unit 6  
 17 Library recreational books, Law Library, yard and environmental stimulation to his mental illness are  
 18 of "real substance" and the 24 hour Isolation for 50 days place plaintiff in atypical and significant  
 19 hardship in relation to the amenities already acquired at Unit 6 (Compl. p. 9 par. 33) Thus *Limon, Liles and*  
 20 *Cota* failure to perform a substantive attempt to verify or disprove plaintiff safety concerns against Duran  
 21 restricted their power to impose a "Yard hold" and 24 hour Isolation at Unit 8 and thus violated plaintiff's  
 22 Due process. Drawn from the form and its standard application making specific the regulation to  
 23 administer double cell agreements was denied Defendant's Motion to Dismiss should be denied.

24 Notice of Rules or Regulation is required before plaintiff could be sanctioned for its  
 25 violation. Defendants argue plaintiff was given verbal notice that Operational Plan # 85  
 26 make specific the Law of double cell agreements and refusing to double cell will result in a yard  
 27 hold or 24 hour Isolation at Unit 8. (Compl. p. 12 par. 2-8). Two hour notice is not fair  
 28 notice when vague verbal notice is given.

1 "Due process requires that inmates receive fair notice of a rule before they can be sanctioned  
 2 for its violation." *Forbes V. Trigg*, 976 F.2d 308, 314 (7th Cir. 1992), cert. denied, 113 S.Ct. 1362 (1993);  
 3 accord, *Reeves V. Pottcox*, 19 F.3d 1060, 1061 (5th Cir. 1994) (prisoner was entitled to notice of special rules  
 4 in segregation unit) Further, defendants regulation mandates that within 14 days of transfer  
 5 to another institution, the new arrival shall be given a written summary of local procedures  
 6 governing conduct... California Code of Regulations (CCR) Id at Section 3002.2 (a) (2).

7 A plaintiff claiming violation of due process through application of vague regulation  
 8 must as a threshold matter, alleged that a regulation affects constitutionally protected conduct  
 9 *Williams V. Vidmar* 367 F.Supp.2d 1265 (N.D. Cal. 2005). Operational Plan PS fails to  
 10 provide a reasonable degree of certainty of meaning see *Lanzetta V. New Jersey* (1939) 306 U.S. 451  
 11 453, 59 S.Ct. 618. This failure leaves the regulation susceptible of arbitrary or discriminatory  
 12 enforcement and overbroad application, and fails to provide adequate notice to those who must  
 13 observe its structure. *Zios V. Ione* 812 F.2d 1032, 1038 (11th Cir. 1987) and it does not  
 14 give the person of ordinary intelligence a reasonable opportunity to know what the statutes  
 15 prohibit (see *Grayned V. City of Rockford* (1972) 408 U.S. 104, 108, 92 S.Ct. 2294, 2298-2299.

16 Officers interpret (OP) #85 as willfull interference in the duties of a peace officer see  
 17 (Compl p. 51, CDC 115 form) or Refusing an order to double cell at (Compl p. 20, CDC 115 form), if  
 18 it has been refuse to double cell. This enforcement resulted in inmate Dale CDC No T- lost two  
 19 49 in being cut with a blade and denied his right to protection from inmate violence 18 U.S.C.  
 20 4042 (a) and protected Constitutional activity in protection derived from Farmer 511  
 21 U.S. at 834, 837 and California Civil Code 43. Plaintiff properly stated a due process violation  
 22 Defendants Motion to dismiss should be denied.

23 Defendants Limon, Liles, Cota, Cowan and Hernandez deprived plaintiff of  
 24 yard a liberty interest, starting September 25, 2006. The yard hold was implemented two hours after  
 25 plaintiff refusal to double cell or signed the agreement. Limon, Liles and Cota were the moving force. they  
 26 authored a CDC 115 requiring defendant's Cota, Cowan, and Hernandez torturous approach to isolate  
 27 plaintiff at Unit 8. The loss of liberty interest in outdoor exercise yard required a hearing before  
 28 or after. CCR Section 3322 (c) place a limit, only ten days of yard are allowed to be imposed



1 as a disciplinary measure. Sandin, regulation restrict the power of prison officials. And yard  
 2 liberty interest is of real substance. Therefore any type of hearing regarding yard hold was  
 3 required. But none was ever given to address the yard hold. Defendants Motion to  
 4 dismiss should be denied.

5 Liberty Interest in ones classification exist where a liberty is derived by that  
 6 classification. (Compl. at 10) Defendants confused plaintiff's eighth amendment claims. Plaintiff were  
 7 no Failure to protect claims. Defendants deprived plaintiff of freedoms created by the Safety Concerns  
 8 classification. See Sandin (holding that a state-created liberty interest in ones classification may  
 9 exist where classification imposes "atypical and significant hardship"); see also *Barnett v.*  
 10 *Centoni*, 31 F.3d 813, 815-16 (9th Cir. 1994) (holding that a prison inmate was deprived of  
 11 liberty and property because he was reclassified thereby losing certain privileges). Plaintiff's  
 12 Classification comes along with protection from other inmates. Because defendants and all  
 13 of them knew plaintiff would be place in yard hold and then a 24 hour Isolation. Due  
 14 process was due. Was Inmate Duran SNY or safety concerns? No. Defendants  
 15 argue plaintiff "double up" constitutional claims (M.D. p. 12, par 16) alleging claim VIII  
 16 is an Eighth Amendment claim. The only problem with this argument is that plaintiff  
 17 did not make a failure to protect claim and the liberty interest in protection was denied by defendants  
 18 as stated by lieutenant Pederson (Compl. p. 8 par. 27) Defendants motion to dismiss should be  
 19 denied.

## 20 6) State Claims

21 Pursuant to 28 U.S.C. Section 1367(a) the district court has jurisdiction  
 22 over all other claims that are so related to claims to claims in the action within such original  
 23 jurisdiction that they form part of the same case or controversy. Once judicial power  
 24 exist under 1367(a), retention of supplemental jurisdiction over state law claims under 1367  
 25 (c) is discretionary. *Acri v. Varian Assoc., Inc.* 114 F.3d 999, 1000 (9th Cir. 1997).

26 7) Plaintiff Ninth Cause of action is state Constitution Article I, section 13  
 27 unreasonable seizure, having no cogent reason for this court to depart from the  
 28 Fourth Amendment analysis construing a provision of the state Constitution. Plaintiff

1 realleges the Unreasonable Seizure argument at p. 7 par. 25-28 and p. 8 par. 1-28.  
 2 Defendants motion to dismiss must be denied.

3 8) Interference with the exercise of civil Rights Causes of action Ten, eleven, Twelve and  
 4 Thirteenth Plaintiff drew these actions by California Civil Code § 21(a) and (b). But  
 5 miswrote the section as § 2 (a). Section 52 (a) requires allegations of some race based or class  
 6 discrimination; Section 52 (2 (a) and (b)) requires that an attempt or deprivation of a right be done  
 7 by coercion, intimidation or threat. Plaintiff Cause of action Eighteenth reflects his intended purpose  
 8 (Compl. p. 15 par. 110-114). Defendants Challenge is causation as the same defect of the eighth  
 9 amendment claims (MD. p. 14 par. 24-28 and p. 15 par. 1-2) The court may assume cause of  
 10 action eighteenth cures the defect see Fed. R. Civ. P. 10 (c) see Retail Clerks Intern. supra  
 11 373 U.S. 746 1963; drawing inference from "well pleaded" allegations; and Wheelidin supra 373 U.S.  
 12 647 inferring facts from allegations of complaint, and rule 10 (c) incorporating facts by  
 13 reference. OR. the court may grant leave to amend and cure the defects, Karim-panahi 839 F.2d  
 14 at 623

15 9) Cause of action Fourteenth and Fifteenth (Compl. at 13-14) defendants alleged causation  
 16 the same as the eighth amendment claims. (MD. 14. par. 24-28 and p. 15 par. 1-2) Plaintiff  
 17 alleged "... defendants and all of them infringed upon plaintiffs rights as stated on par 1-80  
 18 supra" (Compl. p. 13 par. 83) Under Fed. R. Civ. P. Rule 10 (c) plaintiff may incorporate by  
 19 reference paragraphs of the complaint. This practice is discourage and plaintiff may cure  
 20 these defects on a leave to amend the complaint.

21 10) Negligence, plaintiff drew upon Government Code Section 11340.5 (a) as  
 22 the means duty imposed designed to protect plaintiff. Under this guidelines plaintiff has no  
 23 case. Plaintiff should have alleged CCR section 3002 (a) (2) as the duty imposed designed to  
 24 protect plaintiff. Plaintiff should be given leave to amend and fix the defects Karim-panahi  
 25 839 F.2d at 623.

26

27

28 1/ Jones V. Kmart Corp. 70 Cal. Eptr. 2d 844 (Cal. 1998) at 846

1 (1) The eighteenth Cause of action is redundant and plaintiff again incorporates by  
2 reference paragraphs, to link defendants. it should be amended to specified what  
3 each defendant did. Defendants Motion to dismiss should be denied.

### 4 5 CONCLUSION

6 Defendants actions are subject to scrutiny under section 1983. Defendants  
7 Motion to Dismiss should be denied and plaintiff given an opportunity to cure any defects

8 Unserved defendants will be served timely and would not be dismissed  
9 Additionally The Department of Corrections is only sued under state Law. There is  
10 no Eleven Amendment immunity concerns.

11  
12  
13 Dated: July 12, 2008

Respectfully Submitted

Victor Parra

In Prose  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



**VERIFICATION**STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

Case No. 08CV0191 H-CAB

(C.C.P. SEC.446 &amp; 201.5; 28 U.S.C. SEC. 1746)

I, Victor Parra DECLARE UNDER PENALTY OF PERJURY  
 THAT: I AM THE Plaintiff IN THE ABOVE ENTITLED ACTION;  
 I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS  
 TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND  
 BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS

12

DAY OF:

July20 08

AT

Richard J. Orr

(SIGNATURE)

Victor Parra

(DECLARANT PRISONER)

**PROOF OF SERVICE BY MAIL**

(C.C.P. SEC.1013 (a) &amp; 2015.5; 28 U.S.C. SEC.1746)

I, Victor Parra AM A RESIDENT OF Shoreline, To Bonita Corral, For. San Diego  
County STATE OF CALIFORNIA. I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND AM NOT  
 A PARTY OF THE ABOVE-ENTITLED ACTION. MY STATE PRISON ADDRESS IS: P.O. BOX

ON

July 1220 08

I SERVED THE FOREGOING:

Memorandum of points  
and authorities in support of plaintiff's Answer to Defendant's Motion  
for summary judgment.

**(SET FORTH EXACT TITLE OF DOCUMENTS SERVED)**

ON THE PARTY (S) HEREIN BY PLACING A TRUE COPY (S) THEREOF, ENCLOSED IN A SEALED ENVELOPE (S),  
 WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED  
 AT Richard J. Orr, 211 Corral, For. P.O. Box 79900, San Diego CA 92179

(To the Clerk)

United States District Court  
 Southern District of California

880 Front Street, Suite 4290  
 San Diego CA 92101-8900

Sylvie P. Snyder

Deputy Attorney General  
 110 West A. Street, Suite 1100

San Diego CA 92101

P.O. Box 85266

San Diego CA 92186-5266

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS  
 REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED.  
 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE:

July 12, 2008Victor Parra

(DECLARANT PRISONER)